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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Local Exchange Carriers' Rates,	)	
Terms, and Conditions for	)	CC Docket No. 93-162
Expanded Interconnection for	)	
Special Access	)	

MFS COMMUNICATIONS COMPANY, INC.
COMMENTS OPPOSING DIRECT CASES

Andrew D. Lipman
Jonathan E. Canis

Cindy Z. Schonhaut, Esq.
Vice President
Government Affairs
MFS Communications Company, Inc.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 424-7709

SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 424-7500

Attorneys for
MFS COMMUNICATIONS COMPANY, INC.

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SUMMARY

The LEC direct cases fail to support their collocation rates, terms and conditions. Indeed, from the record of this proceeding, the Commission has more than ample data from which it can prescribe just and reasonable rates, and fair terms and conditions.

Several LECs have employed excessive cost factors and loadings in establishing their collocation charges, including inflated costs of debt and equity, and unreasonable inflation factors. The Commission should require these LECs to recompute their charges using reasonable cost factors.

Similarly, numerous LEC recurring charges for collocation appear to be overstated. LECs have employed highly disparate, unreliable, and unjustified methodologies to compute their floorspace rental rates. The Commission should prescribe one uniform methodology to ensure reasonable rates.

LEC recurring charges for cross-connects, cable space and support, and power charges are inflated by overengineering, assigning common costs to single users, and applying redundant charges. The Commission should require the LECs to amend their costing methodologies and tariff terms to ensure reasonable rates for these functions.

LEC nonrecurring charges for cage construction and central office space preparation are excessive and inadequately supported. Again, these rates are inflated by unnecessary overengineering and unreasonable cost allocation methodologies. The Commission should order the LECs to amend their rates and tariff terms accordingly.

Finally, LEC tariff terms concerning insurance requirements, the assignment and waiver of liability, and termination of services are unreasonable, inflating the cost and reducing the utility of collocation. The Commission should order the LECs to revise their tariff terms and conditions if the procompetitive goals of the Commission's collocation policies are to be realized.

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COMMENTS OPPOSING DIRECT CASES

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, and in response to the Commissions' Designation Order,[1/] hereby respectfully submits its Comments in opposition to the Direct Cases filed by various local exchange carriers ("LECs"), in purported support of their rates, terms and conditions for special access expanded interconnection. As MFS discusses below, most of the LECs have grossly overstated their costs, and have unreasonably bloated the rates that competitive access providers ("CAPs") and other parties must pay for central office collocation. Similarly, many of the LECs have established unreasonable terms and conditions for interconnection that serve to restrict the utility of and further inflate the cost of interconnection. As a result, these unreasonable rates, terms and conditions will inhibit the procompetitive goals that the Commission's expanded interconnection policies are intended to promote. In order to effectuate its procompetitive policies, the Commission must prescribe just and reasonable

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1/ Local Exchange Carrier' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-192, DA 93-951 (released July 23, 1993) (Designation Order).

rates, terms and conditions for the LEC collocation tariffs, in accordance with the analysis contained herein.

I. THE PROFFERED COSTING METHODOLOGIES AND SUPPORT DATA CANNOT JUSTIFY THE LECS' RATES AND CHARGES

The Designation Order required the LECs to provide detailed justification for all significant cost inputs underlying their collocation rates and charges. As MFS discusses below, the available data demonstrate that LECs have grossly overstated the cost of collocation service, and have established excessive collocation rates. Below, MFS discusses in detail specific cost factors and loadings that have been materially overstated by the LECs, and recurring and nonrecurring charges that are excessive and unreasonable.

A. Cost Factors and Loadings

In establishing their collocation charges, the LECs apply a variety of factors to their direct costs. As MFS discusses below, these factors and loadings (many of which are wholly artificial) appear to overstate greatly the cost of providing collocation services.

1. Cost of Money

The cost of money factors identified by the LECs vary widely from LEC to LEC and from service element to service element. A matrix identifying the LECs' cost of money factors by collocation rate element is appended as Attachment A. The disparity in the cost of money factors, and in their applications to different rate elements, indicates that many of the LECs have employed arbitrary and insupportable cost of money factors in setting their collocation rates. The variation in the magnitude of the cost of money is illustrated at the low end by NYNEX and Pacific, which apply uniform 1.7% and 6.28% money factors, respectively, and at the high end by Bell Atlantic, which applies a variety of cost factors ranging from 12.09% to 15.05%. NYNEX and Pacific have comparatively reasonable rates for most of their collocation rate elements, while Bell Atlantic, consistent with its generally philosophy on interconnection charges, has established some of the most excessive rates in the country.

The Commission can ensure reasonable recovery of the cost of money by prescribing restrained and uniform application of the cost of debt and the cost of equity. Most LECs identify costs of debt in the 8%-9% range. Apparently, LECs that employed an 8.8% cost of debt referenced the level approved by the Commission in the represcription of the LECs' rate of return in 1990.[2/] The use of debt cost factors from a 1990 proceeding (which apparently are premised on 1989 data) will greatly overstate the LECs' cost of debt, however, because the nationwide cost of borrowing has declined precipitously over the last four years.[3/] For example, in third quarter 1990, the prime rate was 10%. At the date of this filing, the prime rate is as low as 5.75%. In order to counter the LECs' undeniable incentive to overstate the rates that they apply to competitors for collocation, the Commission should require all LECs to employ an objective and verifiable cost of debt. MFS therefore

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[2/] See Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 7507 (1990).

[3/] Moreover, it is inappropriate for LECs to employ an embedded cost of debt for collocation because the majority of their investment in collocation facilities is new.

urges the Commission to prescribe the use of the prime rate, averaged over the first six months of 1993, as their cost of debt.[4/]

Similarly, the LECs' failure to provide detailed cost of equity data raises substantial concerns that these costs are overstated. Bell Atlantic is typical in contending that it must use "jurisdiction-specific numbers that reflect the estimated costs of raising capital in the financial markets" because the "markets do not adjust Bell Atlantic's costs to meet the Commission's 11.25% authorized rate of return."[5/] However, because no LEC has provided evidence of its cost of equity in the record of this proceeding, and because LECs have evinced their ability and incentive to inflate unreasonably the collocation charges to their competitors, the Commission should establish the prescribed rate of return of 11.25% as the maximum cost of money that LECs may use in their rate computations.

2. Inflation Factors

Bell Atlantic employs a unique "inflation factor" in estimating some of the direct costs associated with provisioning collocation. Bell Atlantic's application of the inflation factor is unclear, however. Bell Atlantic states that "an inflation factor may be used to adjust vendor price" for investment in collocation equipment,[6/] although it does not quantify the effects of this adjustment. In addition, Bell Atlantic states that it increased the

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4/ Significantly, the Commission currently is considering the use of publicly available data on the cost of corporate debt as an appropriate measure for its rate of return represcription model. Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Process, 7 FCC Rcd 4688 (1992).

5/ Bell Atlantic, at Attachment B, page 6.

6/ Bell Atlantic, at Attachment B, page 2.

estimates of its circuit equipment and building maintenance expenses by using an inflation factor, although the factor is not quantified.[7] Finally, Bell Atlantic identifies the use of an 11.20% inflation factor in increasing its charges for AC power.[8]

The use of such an inflation factor is wholly unjustified. First, contrary to the Commission's explicit directions, Bell Atlantic has failed in most cases to identify the specific investment or expense elements that are affected by its inflation factor, or quantify the effect of this cost input. Second, the 11.20% factor that Bell Atlantic has identified is grossly excessive. For example, for the second half of 1992, the Gross National Product (or Gross Domestic Product) Price Index ("GNP-PI") has reflected an inflation rate of only 1.019,[9] or 1.9% -- well below the 11.20% figure chosen by Bell Atlantic. Finally, other LECs have not found it necessary or reasonable to employ a similar factor. Because Bell Atlantic's unique application of an inflation factor appears intended surely to unreasonably inflate the costs of collocation, Bell Atlantic should be ordered to identify specifically all cases in which it employed an inflation adjustment factor in computing its collocation charges, and should be required to reduce those rates accordingly to reflect elimination of the factor.[10]

7/ Bell Atlantic, at Attachment B, at page 9.

8/ Bell Atlantic, at Attachment B, Exhibit 14.

9/ Communications Daily, May 14, 1993, page 3. The Commission has identified the GNP-PI as the most reliable inflation adjustment for the telecommunications industry, and employs the GNP-PI in its Price Cap formulae.

10/ If the Commission does not take this action, it should, at a minimum, require Bell Atlantic to recalculate its rates using the GNP-PI for 1992 as the inflation factor.

B. Recurring Charges

Many of the LECs' recurring charges for collocation reflect unreasonable costing methodologies, inflated investment amounts and overengineering. MFS discusses these charges on a rate element-by-rate element basis below.

1. Floorspace Rental

No rate element reflects the use of such a wide variety of inconsistent and contradictory costing methodologies as the LECs' floorspace rental rates. As a result, the rates vary enormously from LEC to LEC, and in some cases, from study area to study area. In order to establish reasonable charges for LEC central office floorspace, the Commission must use its prescriptive power to establish a consistent and reasonable costing methodology for all LECs subject to the expanded interconnection rules.

The costing methodologies employed by the LECs generally fall into three categories: (1) the "pure market" approach used by U S West, which sets rates based purely on market factors; (2) the "pure cost" approach taken by LECs such as Ameritech and NYNEX, which sets rates based on cost factors derived from a number of sources; and (3) a "comparative market" approach, such as that used by Southwestern and Bell Atlantic, which derives rental rates from published real estate industry sources. As MFS discusses below, the latter methodology, if accompanied by guidelines that ensure reasonableness, yields reasonable and objectively verifiable rates, and should be prescribed for all LECs.

The "pure market" and "pure cost" approaches are fundamentally flawed in several respects. U S West justifies its use of a pure market approach simply by complaining that the Commission has forced it into the "real estate business," and concludes that the free market pricing model is therefore appropriate.[11/] U S West then explains that its market-based rates were founded on undocumented, oral consultations with local realtors,[12/] and affirms that no reference to any "formal or readily-available publication" was included.[13/] Not surprisingly, U S West's methodology has yielded some of the most excessive rental rates published by any LEC.

U S West's methodology is unreasonable on its face. The Commission has recognized that LEC central offices are bottleneck facilities,[14/] and the application of "what the market will bear" pricing to such facilities is obviously inappropriate. Moreover, U S West's refusal to provide any credible evidence to support its rental rates compels rejection of its proposed costing methodology.[15/]

The "pure cost" approach is also unreliable in establishing reasonable floorspace rental charges. First, the sources of the cost data vary widely from LEC to LEC. Ameritech refers to R.S. Means data[16/] to compute what the costs would be if the central

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11/ U S West, at page 3.

12/ U S West, at 46.

13/ U S West, at 50.

14/ E.g., Ameritech Operating Companies, 8 FCC Rcd 4589, 4597 (1993).

15/ After decrying the Commission's action in "forcing it into the real estate business," U S West states that it "has, for some years, had business leasing certain portions of our central office space." U S West, at page 45. U S West's refusal to include information concerning the rates, terms and conditions of such rental in its direct case denies highly relevant information to the Commission and to interested parties in this proceeding.

16/ R.S. Means is a publication for the construction industry that lists data on construction costs.

office were built today.[17] Pacific uses a similar approach, but goes one step farther. In addition to computing the cost of constructing a brand new central office, Pacific includes the cost of purchasing the land upon which the central office is located, at current market rates.[18] NYNEX derived its cost data from its internal Continuing Property Record and Building Inventory System, inflated by a "carrying charge factor" based on ARMIS data (with land and building portions deleted).[19] While these approaches differ considerably, they both suffer from an inability to determine costs reliably and reasonably. First, as Ameritech admits, its central offices were built as many as 70 years ago.[20] This is also clearly true of NYNEX central offices in New York and Boston. In the case of central office construction, where many of the LECs' central office investments have been fully depreciated, the cost nexis for floorspace is simply not ascertainable.

Ameritech's and Pacific's proposed answer to this problem is to pretend that all construction is new, referencing current construction costs from the R.S. Means data. This approach imposes fictitious and grossly overstated costs on collocators -- clearly the cost of new construction (and of land acquisition in Pacific's case) will be much greater than the costs that LECs actually incurred in the past when constructing their central offices. Similarly, NYNEX's approach requires the Commission and the public to rely on data contained only in NYNEX's internal accounting systems. Such an approach, if prescribed

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17/ Ameritech, at page 14.

18/ Pacific, at page 10.

19/ NYNEX, at Appendix A, page 2.

20/ Ameritech, at page 13.

for all LECs, could lead to enormous variations in rental rates. Moreover, absent a detailed showing by NYNEX of its methods for allocating similar costs to its other services, there is simply no way to determine if collocators bear an unreasonable portion of these costs. For these reasons, the "pure cost" methodologies should be rejected.

The comparative market approach adopted by many of the LECs establishes a reasonable methodology for setting floorspace rental rates. Obtaining base rental rates from objective, published real estate industry sources for the area in which the central office is located ensures that the LECs receive reasonable compensation for use of their floorspace, without reliance on the vagaries of internal databases that are not subject to public scrutiny, or on wholly irrelevant cost estimates for current construction. This is the approach taken by Bell Atlantic[21] and Southwestern Bell.[22] While MFS generally endorses these LECs' methods of establishing a base rental rate, the LECs proceed to apply duplicative cost factors that unreasonably inflate their rental rates.

Both LECs begin with market rates derived from BOMA.[23] This approach is reasonable, and establishes a base rent that is uniformly applied, readily ascertainable, and ensures adequate compensation to the LECs. The Commission should prescribe BOMA or other comparable sources of standard industry data as the basis for all LEC floorspace rental rates.

21/ Bell Atlantic, at Attachment B, pages 20-22.

22/ Southwestern Bell, at page 11.

23/ The Building Owners and Managers Association is a real estate trade organization that publishes rental data.

After using BOMA to establish reasonable base rent levels, however, Bell Atlantic and Southwestern increase that base rent with factors taken from R.S. Means data. Indeed, this practice is also widespread among the LECs that purport to use a pure cost method, such as Ameritech and Pacific. The use of R.S. Means data is inappropriate in either case. As used by the "pure cost" LECs, data concerning the current cost of construction introduces totally fictional costs that the LECs have not, and will not, incur. To set rental rates at levels that recover such costs is inimical to the principles of cost-based ratemaking that are codified in the Commission's rules.

The use of R.S. Means data to inflate verifiable market rates in a comparative market methodology is similarly flawed. Southwestern summarizes the rationale behind this approach in its direct case:

> The publication, "R. S. MEANS SQUARE FOOT COSTS," was then used to develop a cost factor to adjust the office space rates [obtained from BOMA]. When compared to "office" building <u>construction</u>, costs, "telephone exchange" building <u>construction</u> costs are 1.72 times more expensive. . . . Telephone Exchange buildings are 1.72 times more expensive to <u>construct</u> than office buildings due to more expensive structural, electrical, mechanical, and fire resistive systems and components required by building codes and telecommunications industry practices.[24/]

Marking up the floorspace rental rates for such components is inappropriate because all LECs recover these telecommunications-specific construction costs through their nonrecurring charges for central office preparation and cage construction.[25/] The use of R. S. Means

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[24/] Southwestern, at page 11. (emphasis added).

[25/] Indeed, these "construction"-based costs are more appropriately recovered through nonrecurring charges than through recurring rental rates.

data proposed by LECs using the hybrid costing approach would therefore double-recover the costs associated with structural, electrical, mechanical, and fire resistive systems, and so should be disallowed.

In addition, Bell Atlantic proposes to further increase its base rental rate by applying an "administrative cost" factor. Such a factor has already been rejected by the Commission because administrative costs are typically reflected in the comparative rental rates published by BOMA and other industry sources.[26] Bell Atlantic argues that such additional cost elements are justified because Bell Atlantic is not an "average landlord," and incurs additional costs in periodically reviewing switch expansion plans, reacting to regulatory changes, keeping track of space available for collocation, and performing extensive security assessments.[27] In listing these functions, however, Bell Atlantic fails to show that such activities differ quantitatively or qualitatively from the property management functions routinely performed by large landlords, including those that specialize in serving tenants in the computer or telecommunications industries. Indeed, reference to BOMA rents may be generous to Bell Atlantic: while ongoing building security is a function factored into BOMA rents, Bell Atlantic recovers substantial security-related costs in the nonrecurring charges it imposes for preparing its central offices to accommodate collocation. Because Bell Atlantic has not shown that it will fail to recover all relevant administrative costs in its base rental rate, the additional administrative costs contained in its direct case should be disallowed.

26/ Ameritech Operating Companies, 8 FCC Rcd 4589, 4599 (1993).

27/ Bell Atlantic, at Attachment B, page 23.

Finally, Pacific Bell includes a miscellaneous cost input in its rental charges that is highly objectionable. Specifically, Pacific establishes the floorspace cost of a 100 square foot collocated space by multiplying the respective costs per square foot by 130. Pacific argues that such a costing approach is appropriate because a collocator requires an additional 30 square feet of space to access its collocated cage. Pacific argues that such space is not common, but is effectively dedicated to the collocator's exclusive use.[28/]

The Commission should reject the Pacific position for several reasons. First, no other LEC has proposed such a costing scheme, and Pacific has not demonstrated that its central offices differ significantly from those of other LECs'. Acceptance of Pacific's costing methodology would therefore result in a windfall for Pacific. Second, Pacific's assertion that none of the access space in its collocation arrangements will be used as common space is wholly unsupported and highly unlikely. Indeed, Bell Atlantic specifically provides for "non-standard" cages in its central offices because its cabling and conduit may run above and around the space made available for collocation.[29/] It is probable that Pacific personnel also will access the space above and around collocation arrangements to gain access to Pacific conduit or electrical or mechanical systems. Moreover, Pacific personnel will traverse the space in front of one collocator's cage in order to install and inspect another cage. Thus, the assertion that each cage has a 30-square foot "front yard" that is dedicated to the exclusive use of that collocator is wholly fictitious. Such an arrangement has never been the case in any of the central offices that have offered intrastate

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28/ Pacific, at page 11.

29/ Bell Atlantic at Attachment B, page 34; Bell Atlantic, Tariff F.C.C. No. 1, § 19.4.8.

interconnection in the past. Finally, Pacific's costing scheme is easily manipulated. Pacific has complete control over the configuration of its collocation cages, and could easily place two cages in such a way that the entry doors were immediately across an access hall from one another. In that case, the 30-square foot front yard would be shared by two collocators, cutting the access space dedicated to each cage in half. Conversely, if Pacific decided to construct its cages with a 5-foot wide hallway between them, the access space attributed to each cage could be 50 square feet, instead of 30. For all these reasons, the Pacific scheme is unworkable and unreasonable, and should be disallowed.

For the foregoing reasons, therefore, the Commission should prescribe one costing methodology to be used by all LECs. This methodology should center on BOMA data to obtain base rental rates, and should allow LECs to increase the base rate by a factor to recover reasonable operating costs, as derived from published real estate industry sources. Reliance on costs derived from internal accounting databases, or from R.S. Means new construction figures, should be prohibited. In addition, extraneous administrative costs, and efforts to allocate costs on a greater amount of floorspace than will actually be occupied by the collocator, should be disallowed.

2. Cross-Connect Charges

In MFS' Opposition to the February 16, 1993 LEC collocation tariff filings, MFS showed that most of the cross-connect charges tariffed by the LECs were excessive and unreasonable.[30/] The LECs' direct cases fail to rebut this conclusion. The excessive rates

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[30/] MFS Communications Company, Inc. Petition to Reject, or Alternatively Suspend and Investigate Portions of Proposed Collocation Tariffs, filed in CC Docket No. 91-141 on March 17, 1993, at pages 21-26 ("MFS Opposition").

derive from two fundamental flaws in the LEC filings: overengineering, including the excessive use of repeaters, and overstated investment costs. MFS addresses these issues in turn below.

The most excessive cross-connection rates in the country have been established by Bell Atlantic and U S West. Both LECs require that they provide a repeater for all, or most cross-connects, regardless of the length of the "jumper cable" that actually connects the collocator's equipment to the LEC's main or intermediate distribution frame.[31/] The repeaters comprise the bulk of the investment associated with the cross-connect rate element. In fact, Bell Atlantic states that "for DS1, repeaters comprise 95 percent of the connection service rate."[32/]

The use of repeaters required by Bell Atlantic and U S West tariffs are technically unnecessary and needlessly inflate the cost of collocation. In fact, many LECs -- including GTE,[33/] Ameritech[34/] and NYNEX[35/] -- specifically permit collocators to provide their own repeaters within their collocated cages, if repeaters are necessary. Bell Atlantic and U S West have provided no evidence of any technical or operational factors that prevent them from including similar provisions in their collocation tariffs. The Commission should therefore require Bell Atlantic and U S West to tariff provisions similar to

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31/ Bell Atlantic, at Attachment B, page 25; U S West, at page 54.

32/ Bell Atlantic, at Attachment B, page 25.

33/ GTE, at page 19.

34/ See generally, Ameritech, Tariff F.C.C. No.2, Transmittal No. 730, filed August 13, 1993.

35/ NYNEX, Appendix A, page 20.

Ameritech's or NYNEX's allowing collocated parties to provide their own repeaters. Such provisions should be accompanied by substantial reductions in Bell Atlantic's and U S West's cross-connect charges.[36]

3. Cable Space and Support Charges

In its Transmittal No. 585,[37] Bell Atlantic restructured its collocation tariff to unbundle its charge for Network Cable Rack from its Connection Service rate element. As a result, Bell Atlantic established a $0.13 per foot, per service charge for cable racking. This charge is excessive. By imposing the charge on a "per service" basis, Bell Atlantic essentially requires collocators to purchase a dedicated cable rack for each cross-connect they order. This rate structure is inherently unreasonable because cable racks are routinely used throughout LEC central offices to support multiple cables. This standard practice is evidenced in Pacific Bell's direct case, in which that LEC "computed the cost of ladder racking per fiber run per floor on the basis of eight cables per rack."[38] Indeed, the Pacific Bell assumption is very conservative -- a typical cable rack within a central office may support 25 or more cables.

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[36] In addition to the clearly excessive charges established by Bell Atlantic and U S West, it appears that several other LECs have established excessive cross-connection rates by overstating the amount of cable and cable support investment reported in their TRPs. It is not possible to evaluate the reasonableness of their total investment numbers, however, unless the LECs identify their assumptions concerning the average length of the "jumper cable" that connects the collocator's equipment to the LECs' main distribution frame. Because most LECs neglected to provide this data, responsible analysis of their cross-connect charges is not possible. The Commission should require the LECs to specify their assumptions concerning the average jumper cable length.

[37] Bell Atlantic, Tariff F.C.C. No. 1, Transmittal No. 585, filed July 16, 1993.

[38] Pacific, at page 4 (emphasis added).

Bell Atlantic clearly is manipulating its cost data to establish grossly excessive cable support charges. Such abuses can best be prevented by requiring Bell Atlantic to provision its cable racking pursuant to nonrecurring charges. Bell Atlantic should be ordered to amend its tariff accordingly.[39]

4. Power Charges

MFS currently has in operation a number of expanded interconnection arrangements with New York Telephone and New England Telephone, originally established through NYNEX's interim collocation tariff. While MFS does not object to NYNEX' tariffed power rates per se, NYNEX's application of its charges is unreasonable and imposes excessive costs on collocators. Specifically, it is standard industry practice to provide power using two "feeds" -- two separate power cables that run from the generator to the customer. These dual feeds provide redundancy to guaranty uninterrupted power. If the primary feed becomes disconnected, the secondary feed provides backup to prevent an interruption in the delivery of power. In the normal course of business, a customer orders power by specifying the number of amps it requires, and that amount of power is delivered over dual feeds. Representatives of NYNEX recently have announced, however, that in New York, power will be provided only via a single feed -- if a customer desires backup, it must order double the capacity.

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[39] If the Commission fails to order Bell Atlantic to provision cable racking on a nonrecurring charge basis, it should, at a minimum, require Bell Atlantic to recompute its recurring charges based on an assumption that a given cable rack will support 12 cables. This would reduce the per-foot cable rack cost from $0.09 (Pacific Transmittal No. 585, workpaper 4-2) to $0.0075.

This application of NYNEX's power rates is not specified in its tariff terms and conditions, and stands in stark contrast to standard industry practice. For example, BellSouth, which provides power at rates similar to NYNEX's, specifies that it provides power using dual feeds.[40] Moreover, NYNEX's announced position in New York is inconsistent with the collocation arrangements it provides in Boston. MFS currently is collocated in the Franklin Street central office in Boston. In that arrangement, MFS ordered minimum 30 amps of power. NYNEX provided the power for a single charge over dual feeds. MFS appends the New England Telephone bill for collocation power as Attachment B. The bill shows delivery of 30 amps of power for a single charge. The arrangement provides dual feeds. The requirement that collocators pay twice for dual power feeds automatically doubles a collocator's cost of power, and turns NYNEX's otherwise unobjectionable power charges into grossly excessive rates. The Commission should clarify that LECs may not double-charge for redundant power feeds.

C. Nonrecurring Charges

1. Central Office Space Preparation

Several of the LECs' costing methodologies and rates for central office preparation charges are unreasonable and require action by the Commission. First, following the filing of the LECs' original collocation tariffs on February 16, the Commission determined that LECs would not be permitted to price their central office preparation charges on an individual case basis ("ICB"). Bell Atlantic, which had established ICB rates for this function, purportedly complied with the Commission's directive by filing Transmittal No.

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[40] BellSouth, at Exhibit 2, Appendix A, workpaper 2.1-3.

585.[41] Bell Atlantic did in fact eliminate its reference to ICB pricing, but did not replace the central office preparation function with a stated rate. Instead, Bell Atlantic notes that nonrecurring charges will be applied for its Connection Service according to the labor rates listed in another section of its tariff.[42]

In so doing, Bell Atlantic proposes to replace its ICB rates with hourly rates for an unspecified amount of labor hours and unspecified materials costs. This practice is not compliant with the Commission's directives. In fact, every other LEC subject to the Commission's collocation rules has established specified rates for central office preparation. Bell Atlantic's refusal to do so injects unnecessary uncertainty into the collocation process and raises significant concerns that Bell Atlantic will impose unreasonable charges upon competitors seeking collocation. Indeed, Bell Atlantic's history in establishing collocation charges indicates that its time and materials charges for central office preparation may indeed be unreasonable. In its opposition to the LECs' February 16 filings, MFS included two price quotes from Bell Atlantic for central office preparation and cage construction for intrastate collocation arrangements. The quotes were for $165,698 and $127,980, respectively.[30] In order to avoid potential price gouging by Bell Atlantic, and unnecessary, ad hoc litigation, the Commission should order Bell Atlantic to file specific central office preparation charges -- accompanied by full cost support -- as the other LECs have done.

41/ Bell Atlantic, Tariff F.C.C. No. 1, Transmittal No. 585, filed July 16, 1993.

42/ Id. at § 19.7.1(E). See also Bell Atlantic, Attachment B, page 31.

30/ MFS Opposition, at Attachment E.

NYNEX's costing methodology for common central office construction also is inherently flawed. NYNEX states that its common construction costs were derived from its actual experience in building its first 12 collocation arrangements for intrastate collocation.[31/] NYNEX has never been required to justify the costs of its intrastate collocation charges before the NYPSC, however, and so seeks to justify unsupported interstate charges with unsupported intrastate charges. Indeed, NYNEX consistently has rejected MFS' demands for detailed cost data to justify its intrastate common construction charges. Two letters from MFS to a New York Telephone representative demanding such cost data are appended as Attachment C. New York Telephone never responded to this request, or to other requests for cost support made orally by MFS' representatives. Clearly, unsupported bills for intrastate services are inadequate to meet the evidentiary requirements imposed by the Designation Order. The Commission should not allow NYNEX to submit bills for collocation-related common construction until NYNEX has submitted full cost support, and the Commission and the public have had an opportunity to review it.

In its comments opposing the LECs initial collocation filing, MFS also contested the rate structures proposed by Pacific Bell, which impose all central office preparation costs on the first party to achieve collocation, and would provide pro-rata refunds if other parties achieved collocation within a 12-month period.[32/] It is MFS' position that such a rate scheme unreasonably inflates the cost of collocation for the first party seeking collocation, and constitutes a significant barrier to competitive entry. Pacific has provided

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31/ NYNEX, at Appendix B, pages 3-4.

32/ MFS Opposition, at page 12.

no new information to show that such a scheme is reasonable. Indeed, in its direct case, Pacific routinely uses an anticipated demand of four collocators per central office in establishing its other recurring and nonrecurring collocation charges.[33] Pacific should therefore be required to reduce its central office preparation nonrecurring charges to reflect an expected demand of four collocators per central office.[34]

Finally, as MFS argued in its initial opposition to the LECs' collocation tariffs, provisions that would impose extraordinary costs -- such as the cost of removing asbestos from central offices -- upon collocating parties are unreasonable. Since the February 16 filings, U S West has eliminated that provision from its collocation tariff.[35] At least two other LECs -- Bell Atlantic and Centel -- retain the provision. MFS reiterates its argument that the imposition of asbestos abatement upon collocators is unreasonable. First, if a health hazard currently exists in LEC central offices, the LECs need to remove it regardless of whether collocation takes place or not. The claim that vacant central office space would remain unused absent collocation cannot justify the assignment of asbestos abatement costs to collocators. All LEC collocation tariffs contain provisions that allow the LEC to reclaim space provided to collocators for its own use, and raise the possibility that

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[33] Pacific, page 4 (entrance facility recurring charges); page 14 (nonrecurring power charge).

[34] If the Commission does not take this step, it should, at a minimum, eliminate the 12-month restriction on refunds proposed by Pacific. This limitation is wholly arbitrary, and will result in windfall earnings to Pacific any time a party achieves collocation more than one year after the first collocator becomes established. The limitation is also potentially discriminatory because Pacific has ultimate control over the time a collocation arrangement takes to be implemented, and could easily manipulate the timing of collocation to ensure that subsequent collocators do not achieve collocation within the 12-month period.

[35] U S West, Tariff F.C.C. No. 1, Transmittal No. 390, filed August 6, 1993.

LECs could recover collocated space after the costs of asbestos abatement were borne by the collocating parties.

In addition, the decision of how to address asbestos problems is entirely within the LECs' discretion, and could lead to the discriminatory application of unnecessary costs on collocators. For example, if some portions of a central office's vacant space contain asbestos, and others do not, the LEC could decide to reserve the non-contaminated space for its own expansion, and assign only the asbestos-bearing portions of its central office to collocators.

Similarly, there are different ways of dealing with asbestos, and LEC discretion in deciding how to proceed may impose unreasonable costs on collocators. For example, old linoleum was typically backed with asbestos. Professional contractors recognize two ways of dealing with such linoleum: (1) tearing up the linoleum, which requires expensive asbestos abatement procedures, or (2) simply installing a new flooring over the existing linoleum, at minimal cost. LECs should not be in a position to exercise their discretion in such cases in order to impose excessive and unnecessary costs on their competitors. For these reasons, the Commission should order all LECs with such provisions to remove them from their tariffs.

2. Cage Construction

The LECs' supporting materials concerning their cage construction charges are flawed in several respects. BellSouth proposes to build its collocation cages using fire-rated wallboard.[36] In contrast, every other LEC has established rates for cage construction using

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[36] BellSouth, at Exhibit 2, Appendix A, workpaper 2.1E-2, page 1.